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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AHMAD SHARRIE GAY,

Defendant and Appellant.

B206147

(Los Angeles County  
Super. Ct. No. SA063967)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Katherine Mader, Judge. Affirmed.

Robert Bryzman, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Ahmad Sharrie Gay appeals from the judgment entered following his plea of no contest to second degree robbery (Pen. Code, § 211)<sup>1</sup> and his admission that the robbery had been committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist criminal conduct by gang members (§ 186.22, subd. (b)(1)(C)). The trial court sentenced Gay to 12 years in prison. We affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Facts.*<sup>2</sup>

At approximately 1:00 p.m. on May 1, 2007, Los Angeles Police Officer Luis Machuca received a call directing him to a small store called the One Stop Smoke Shop at 1435 La Cienega Boulevard. The police dispatcher had received a 911 call indicating a robbery had just taken place there.

At the shop, Machuca spoke with a clerk at the store, Longlith Boutcharaj. Boutcharaj told Machuca that a man he knew as “Termite,” a member of the Playboy Gang, came into the store and demanded to speak to the owner. When Boutcharaj told Termite that the owner was not in, Termite became upset. He was apparently angry that the night before the owner of the store had given money to another gang member, appellant Gay. Termite placed his hand under his shirt as though he had a gun and told Boutcharaj to “give him everything” he had. Boutcharaj, who was afraid of Termite, backed up and put his hands in the air. After Termite frisked Boutcharaj, he told Boutcharaj to open the register. Boutcharaj did as he was told and Termite walked around the counter, took the money from the register and took a handgun from just beneath the register. Termite pointed the handgun at Boutcharaj, then told Bourcharaj to go into the office and said that he, Termite, “was going to put a hole” in Boutcharaj.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The facts have been taken from the transcript of the preliminary hearing.

Boutcharaj, who was afraid Termite was going to shoot him, refused to go into the office. At that point, Gay, who Boutcharaj knew as “Dopey,” walked into the store. Gay, who was also a member of the Playboy gang, addressed Boutcharaj and told him that “this was just a business transaction.” Termite, taking the gun and the money from the register with him, walked out of the store. Two additional gang members then entered the store and joined Gay. Gay gave to Boutcharaj a business card with a telephone number on it and told Boutcharaj to give the card to his boss when he came to the store.

Carroll Kuroyama owns the One Stop Smoke Shop. When he arrived at the store, he told Officer Machuca that, the previous evening, Gay had come into the store and demanded that Kuroyama pay money “for protection.” Gay had also accused Kuroyama of selling “dope” in the Playboy gang neighborhood and he, Gay, told Kuroyama that he was going to be required to pay a “tax” to the gang for doing so. Gay told Kuroyama that he needed \$3,000. Kuroyama did not have that much cash, but he had given to Gay the \$1,200 that he had. Kuroyama gave the money to Gay because he was afraid that if he did not, something would happen to him or one of his employees. Kuroyama had not called the police after the incident because he was afraid. He explained that “these are gang members, and . . . he did not want to be involved in a case against gang members.” Kuroyama believed that the consequences of such action could be “fatal, and he was in fear for his safety.”

The One Stop Smoke Shop is equipped with a surveillance video camera. Officer Muchuca viewed the tape recording of the May 1 incident then, in court, identified “Dopey” as appellant Gay. Machuca recognized Gay from encounters he had had with Gay when he worked on “the gang unit.” Gay’s gang moniker had always been “Dopey.”

Los Angeles Police Officer Wesley Ikeda works in the gang enforcement detail at the West Los Angeles Division station. He testified that the Playboy Gangster Crips is a criminal street gang whose territory encompasses the area south of Pico, north of Interstate 10, east of Robertson Boulevard and west of La Cienega Boulevard. Among the crimes known to have been committed by gang members are robbery, assault with a

deadly weapon, murder and the sale of narcotics. Ikeda was of the opinion that Gay is a member of the Playboy Gangster Crips gang. He based his opinion on conversations with other officers, “documents,” Gay’s tattoos and his presence in the area. Ikeda was also of the opinion that the crimes allegedly committed on April 30 and May 1, 2007 at the One Stop Smoke Shop were committed for the benefit of the Playboy Gangster gang. His opinion was based on the fact that extorting money from the owner of the store enabled gang members to commit other crimes, such as the buying and selling of narcotics and guns. In addition, the crimes allegedly committed on May 1 were used to instill fear in members of the community. Ikeda explained, “And what that does is give the gang members street [credibility], or respect, in the community because they feel the more fear you instill in the community, the more respect they gain in the gang.” Ikeda testified that Gay is most likely a “shotcaller” in the gang. A “shotcaller” is a “gangster who did his time, who did his work in the gang so that he . . . doesn’t have to do any work anymore by either selling drugs, or robberies, or anything. And he basically makes the other people below him do those crimes for him. [¶] . . . [¶] Basically they’re the leaders of the gang.” The other function of a “shotcaller” is to “placate the witness. And that’s what a shotcaller does, is basically try to placate the witness, and play it down like nothing is happening so [gang members] don’t get into trouble.”

## *2. Procedural history.*

Following a preliminary hearing, on August 30, 2007, Gay was charged by information with extortion (§ 520) and second degree robbery (§ 211), committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)(C)).<sup>3</sup> It was further alleged that Gay had served a prior prison

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<sup>3</sup>

Gay was charged with co-defendant Christopher Vernon Dates whose moniker is “Termite.”

term (§ 667.5, subd. (b)) and previously had been convicted of two felonies within the meaning of section 1203, subdivision (e)(4).

After waiving his right to a jury or court trial, his right to confront and cross-examine the witnesses against him, the right to subpoena witnesses and present a defense and the privilege against self-incrimination, Gay pleaded no contest to second degree robbery in violation of section 211. He then admitted that the offense had been committed for the benefit of, at the direction of and in association with the criminal street gang known as the Playboy Gangster Crips, with the specific intent to promote, further and assist in criminal conduct by gang members pursuant to section 186.22, subdivision (b)(1)(C).

The trial court sentenced Gay to the low term of two years in prison for his conviction of robbery. For his admission the offense was committed for the benefit of a criminal street gang, the trial court imposed a term of 10 years. In total, Gay was sentenced to 12 years in prison. The trial court awarded Gay presentence custody credits for 145 days actually served and 22 days of good time/work time. The court ordered Gay to pay a restitution fine of \$200 (§ 1202.4, subd. (b)), and a suspended \$200 parole revocation restitution fine (§ 1202.45).

On December 17, 2007, Gay made a motion to withdraw his plea and filed with the trial court a petition for writ of habeas corpus. The trial court, after reviewing the record of the plea proceedings, denied the motion and the petition. On January 17, 2008, Gay filed a notice of appeal and request for a certificate of probable cause. At proceedings held on February 15, 2008, the trial court denied the request for a certificate of probable cause.

This court appointed counsel to represent Gay on appeal on June 3, 2008.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed December 24, 2008, the clerk of this court advised Gay to submit within 30 days

any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

**REVIEW ON APPEAL**

We have examined the entire record and are satisfied Gay's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

**DISPOSITION**

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.